

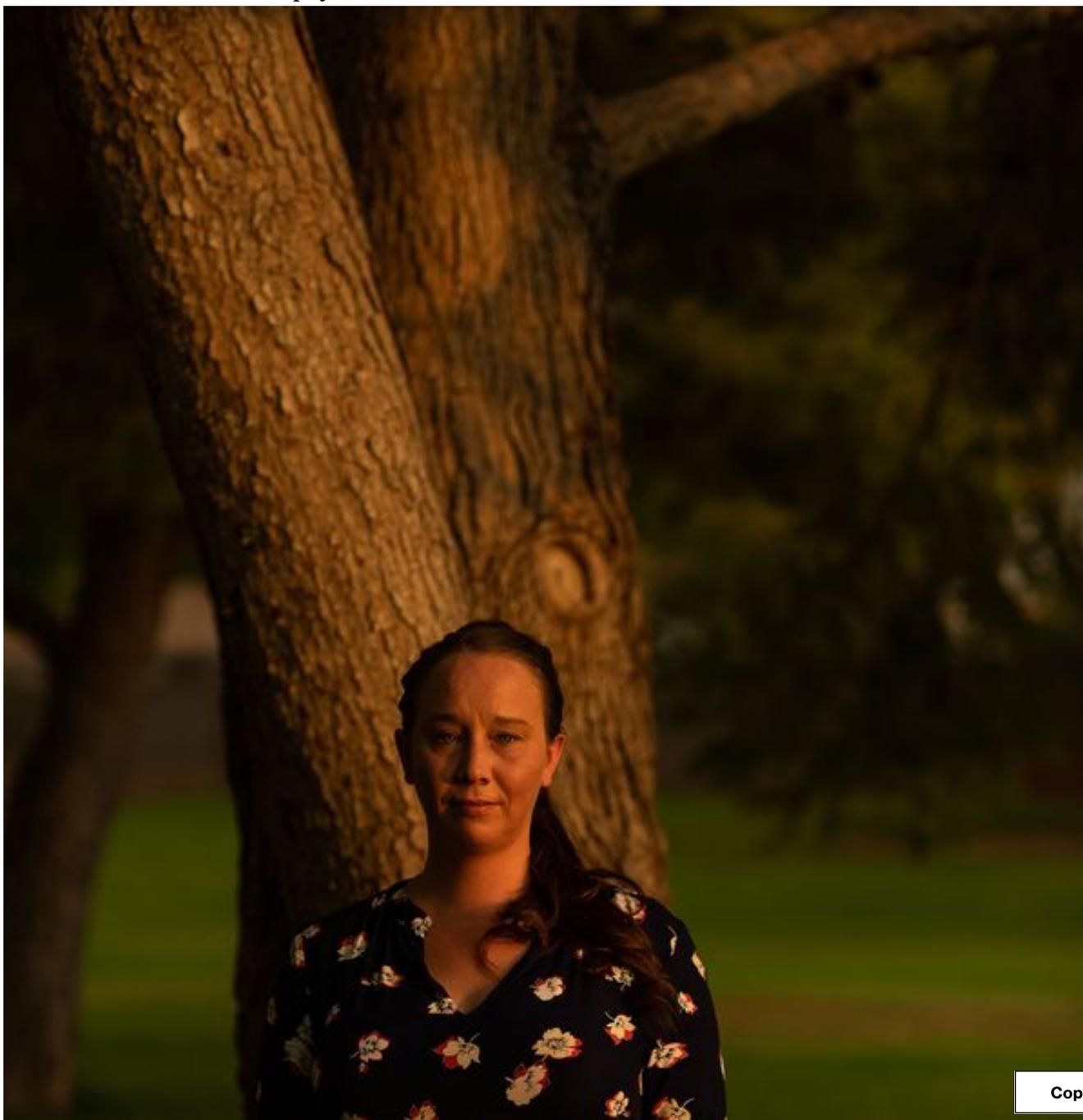


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Lindsay Ruck was just starting her Father's Day brunch shift at the Cheesecake Factory in Chandler, Ariz., when her boss told her a co-worker had Covid-19. In between making bloody marys, Ruck shared the news with several of her colleagues, who'd been worrying about such a moment since the restaurant reopened the month before. At the end of Ruck's shift, when she went to the back office to count her cash, her boss and another supervisor were waiting.

Her boss, the general manager, told her she wasn't allowed to mention the coronavirus case to anyone, including fellow staff. The company was informing only the people who'd worked during the sick employee's last shift, and, per Cheesecake higher-ups, even the information that any worker had tested positive was deemed private, Ruck recalls. Realizing she could be among those kept in the dark about the next sick colleague, she filed a complaint with the National Labor Relations Board and took a couple of weeks off while awaiting the results of a Covid test and weighing whether to keep working there. After getting a negative test result, she returned to the restaurant, in need of the paycheck.

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▲ Ruck says her boss ordered her not to tell anyone when a colleague tested positive for the coronavirus. She's still at work—she needs the paycheck. PHOTOGRAPHER: CAITLIN O'HARA FOR BLOOMBERG BUSINESSWEEK

“I don’t know what kind of risk I’m putting on my family,” says Ruck, who has young kids, plus an elderly mom nearby. She’s worked for the Cheesecake Factory for about 13 years but says it suddenly feels a lot tougher to trust that the company, which promises its staff “unlimited smiles,” will keep her safe.

Cheesecake Factory Inc. said in a statement that it was “balancing its obligation to protect private and confidential health information” while allowing discussion of Covid issues. A Cheesecake lawyer asked Ruck to withdraw her NLRB complaint in exchange for the company posting a notice at her restaurant affirming that employees have the right to discuss health and safety issues, she says. She agreed after learning that the labor board can’t levy punitive damages. “It doesn’t feel like it has a lot of teeth,” Ruck says. “I’m not convinced it will ultimately change their behavior, or any other company’s.”

In the past few months, U.S. businesses have been on a silencing spree. Hundreds of U.S. employers across a wide range of industries have told workers not to share information about Covid-19 cases or even raise concerns about the virus, or have retaliated against workers for doing those things, according to workplace complaints filed with the NLRB and the Occupational Safety and Health Administration (OSHA).

Workers at Amazon.com, Cargill, McDonald’s, and Target say they were told to keep Covid cases quiet. The same sort of gagging has been alleged in OSHA complaints against Smithfield Foods, Urban Outfitters, and General Electric. In an email viewed by *Bloomberg Businessweek*, Delta Air Lines told its 25,000 flight attendants to “please refrain from notifying other crew members on your own” about any Covid symptoms or diagnoses. At Recreational Equipment Inc., an employee texted colleagues to say he’d tested positive and that “I was told not to tell anybody” and “to not post or say anything on social media.”

Amazon, McDonald’s, and Target dispute the allegations. REI says it doesn’t prohibit employees from, or punish them for, raising concerns or discussing their own health. General Electric Co. says it hasn’t threatened employees for discussing Covid-related concerns, and Delta says it hasn’t punished staff for sharing diagnoses. Smithfield Foods Inc. says its policy “is t

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opposite of the allegations in the complaint.” Urban Outfitters Inc. says it encourages employees to report concerns and that OSHA has found no wrongdoing on its part. Cargill Inc. says it considers health information private.

One complaint says trailer manufacturer Great Dane LP set as its policy “Don’t ask, don’t tell.” According to another complaint, plastics company Jeans Extrusions Inc. told workers not to discuss infections, because “they cannot afford to quarantine us all.” According to another, beverage store LiqGo told employees anyone who revealed they had Covid-19 would be fired. Jeans Extrusions says the complaint was untrue. “We are very, very friendly, family-oriented,” says plant manager Vince Lewandowski, “not slave drivers at all.” Great Dane and LiqGo didn’t respond to requests for comment.

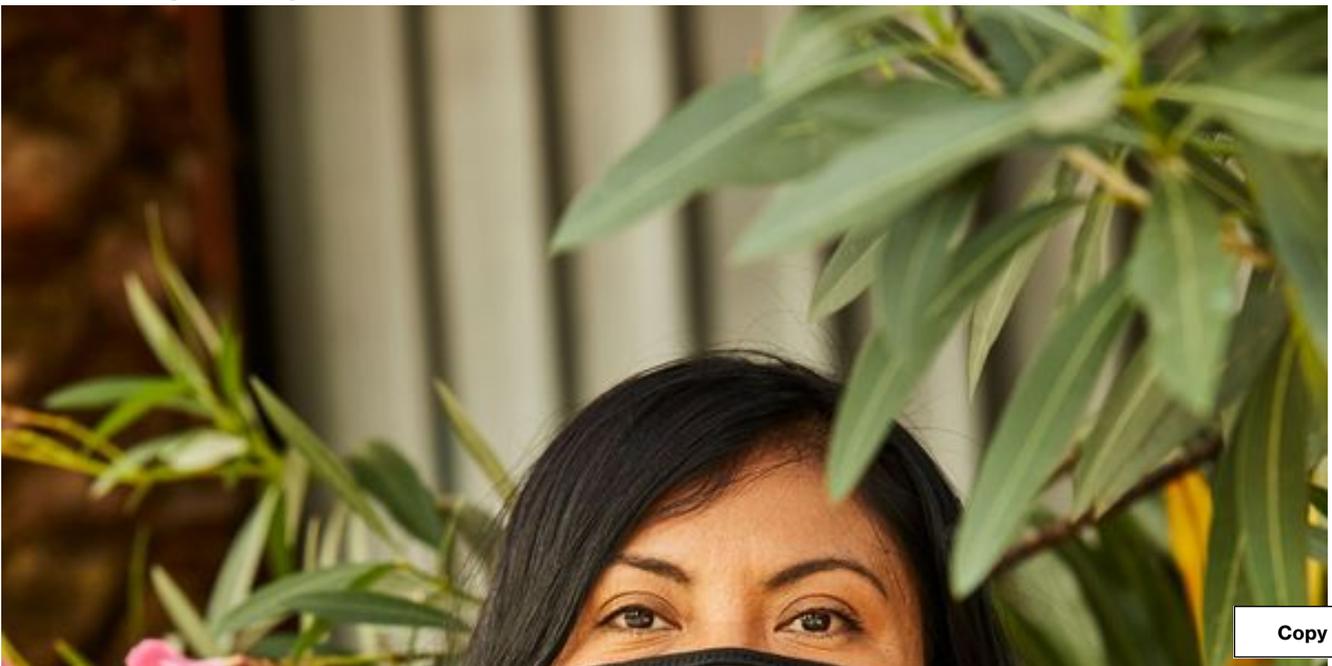
Teachers say they’re getting gag orders, too. At the end of July, as Florida prepared to resume in-person classroom teaching, the school district in Jacksonville’s home county of Duval emailed a warning to employees. Any social media posting that would “reflect badly” on the district’s reputation “may lead to disciplinary actions,” according to the email, later viewed by *Businessweek*. The school district says the email wasn’t meant to prevent employees from expressing views on reopening.

In many cases, workers say their bosses have cited employee privacy to justify the gags, including federal privacy laws such as the Health Insurance Portability and Accountability Act of 1996. But such laws don’t require companies to silence employees on safety matters. On the contrary, federal laws, including those that created OSHA and the NLRB, guarantee employees the right to communicate about and protest their job conditions. The federal bodies have failed to make companies obey the law. Many thousands of OSHA complaints about coronavirus safety issues have yielded citations against just two companies—a health-care company and a nursing home—totaling about \$47,000. “The agency continues to field and respond to complaints, and will take the steps needed to address unsafe workplaces,” the U.S. Department of Labor, OSHA’s parent, said in a statement. The NLRB declined to comment.

Employer crackdowns on free speech threaten to mask another wave of Covid infections and make the end of the year far deadlier than it otherwise might be. “In many places, workplace exposures are driving the pandemic,” says epidemiologist David Michaels, who ran OSHA under President Obama and is now a professor at George Washington University. “To stop this pandemic, workers need to be listened to rather than silenced.”

In mid-July, Irma Cruz returned to work at a McDonald's in Gilroy, Calif., a couple of days after she'd called in sick with a cough and breathing trouble. Cruz, a single mother of three, says she would have stayed home longer except that her boss was refusing to pay for her sick days. When she got a headache, a co-worker gave her an Advil and a manager told her to stay on the job. The next day she learned she'd tested positive for Covid-19.

Cruz says she asked a supervisor to inform her co-workers, but the supervisor said not to worry, that the virus wasn't contagious unless you spent more than 10 minutes with someone. The supervisor also said the news was "confidential," Cruz recalls. Alarmed, she started calling and alerting co-workers herself. Then, she says, the supervisor called back, angrily berating her for disclosing her diagnosis.

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▲ Cruz says a supervisor at McDonald's berated her for telling co-workers she had Covid. PHOTOGRAPHER: GABRIELA HASBUN FOR BLOOMBERG BUSINESSWEEK

Staffing was the problem, says Cruz, who filed a complaint with the county environmental health department. Previously, when a co-worker had reported contracting the virus, other employees refused to come to work. “I don’t want anyone else to get sick,” she says. “I don’t want that on my conscience.” In a statement relayed by McDonald’s Corp., the franchise owner of Cruz’s restaurant said her allegations “completely mischaracterize the extensive steps we have taken to create a safe experience for everyone who enters our restaurants.” He said his restaurant provides paid sick leave and notifies staff when they may have been exposed to a sick co-worker, while being sure to protect sick workers’ privacy. Cruz says she hasn’t been paid for her time in quarantine.

Health confidentiality is a common refrain when ordering workers not to discuss Covid. In a recording that Target Corp. employee Milo Wright made of a conversation with a manager in Shreveport, La., which Wright shared with *Businessweek*, the manager says someone at the

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has tested positive for Covid, then says workers are “prohibited” from talking about the matter on social media. “We want to make sure we get the right information out, and you know how once people start talking amongst themselves, the right information gets distorted, and the wrong information is coming out,” the manager can be heard saying on the recording.

Wright, who was terminated in June, has filed complaints against Target with the NLRB and the U.S. Equal Employment Opportunity Commission and says the company made staff sign a document agreeing not to disclose Covid cases to the public. “While we are considered essential, we are also considered expendable,” says Wright. Target says the firing was unrelated to the coronavirus and that it doesn’t ask staff to sign documents prohibiting Covid discussion. “We provide as much information as possible, while also keeping medical information confidential,” the company says.

So far, companies have had little to fear from federal oversight. Trump-era NLRB rulings have expanded companies’ discretion to restrict activist workers’ speech on subjective grounds such as offensiveness. And the scant number of inspectors under OSHA’s purview—862 as of January, enough to inspect each workplace once every 165 years—has left it at a nadir. OSHA hasn’t issued any regulations to address the pandemic. It’s received more than 8,000 related health and safety complaints, while state agencies have received more than 24,000. The Labor Department says OSHA is recruiting inspectors.

OSHA is supposed to protect whistleblowers against retaliation by their employers. The agency has a separate process for complaints in this vein, but it’s tough to win restitution that way. Workers have only 30 days to file and must rely on OSHA to decide to sue the companies on their behalf, which it rarely does. OSHA released data in August showing it’s closed more than 600 Covid-related whistleblower complaints against companies including Burger King, FedEx, General Motors, Halliburton, 7-Eleven, Tufts University, Walmart, and Warby Parker Retail.

Burger King Corp. says it hasn’t created or sanctioned any policy restricting staff from raising Covid-19 concerns. General Motors Co. and Halliburton Co. deny retaliating. Walmart Inc. says it has a strict nonretaliation policy. FedEx Corp. says safety is its top priority. Tufts and Warby Parker Retail Inc. say they were never informed of any complaint. 7-Eleven Inc. didn’t respond to requests for comment.

On Aug. 14, the inspector general overseeing OSHA issued a report that found the agency had trouble finishing whistleblower investigations in a timely manner even before the pandemic, with the average investigation running for more than nine months. By the end of May, OSHA had received more than 1,600 whistleblower complaints related to Covid-19, and the report warned that worse delays would have consequences: “When OSHA fails to respond in a timely manner, it could leave workers to suffer.”

The Labor Department said in a statement that 86 Covid-related complaints have been settled and that OSHA is evaluating others for possible litigation. “OSHA will continue working around the clock to find ways to protect whistleblowers,” according to the department.

In early July, a supervisor at Maid-Rite Specialty Foods LLC told workers OSHA would be visiting the plant because some staff had complained, according to one of the employees. If they had concerns, they should instead raise them with management, the supervisor said, according to the worker, a mechanic who spoke on condition of anonymity for fear of retaliation. Then the supervisor added, as though he was joking, that once the company figured out who'd gone to OSHA, "you won't see them anymore."

By then, several employees had filed OSHA complaints about the Dunmore, Pa., plant, which supplies frozen meat products to military bases, nursing homes, and schools. One was the mechanic, who in April told the agency he didn't feel safe because the company wasn't telling them about Covid cases there. "About half the plant is out sick," another worker wrote in April. "I'm scared to go to work every day."

The mechanic says OSHA called him to say it would be sending Maid-Rite a letter instead of coming to inspect the plant, and that was the last he ever heard from the agency about his complaint. Letters between OSHA and Maid-Rite show OSHA told Maid-Rite in April to investigate worker allegations itself, and Maid-Rite wrote back saying that it was providing and mandating masks and that 6-foot distancing sometimes wasn't feasible.

The next month, other employees at the plant filed a fresh OSHA complaint, alleging they were in harm's way because of insufficient masks, excessive line speeds, and "elbow-to-elbow

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close quarters. Later, in a sworn affidavit, another worker said he told the human resources department he'd tested positive for Covid, but HR told co-workers he hadn't. Seven weeks after the May complaint, OSHA sent an inspector to Maid-Rite—but in a break from typical protocol, it gave the company a heads-up. “OSHA is here, so do everything right!” a supervisor told staff during the inspection, the mechanic later wrote in an affidavit. Fifteen minutes later, the supervisor returned to say “Never mind,” because the visit was over, the mechanic wrote: “As soon as OSHA left, everything went exactly back to the way it was.”

A couple weeks later, three workers filed a rare lawsuit against OSHA to try to force action by the agency, which had rejected their plea to designate their case an “imminent danger.” In a July 31 hearing on the suit, an OSHA compliance officer, who'd worked for Amazon.com Inc. the year before, acknowledged that she alerted Maid-Rite the day before the inspection. Higher-ups had told her to do so, she said, to make arrangements to ensure she'd be safe. The workers say they still aren't.

Maid-Rite denies the allegations. “We run a clean, safe plant,” Executive Vice President Michael Bernstein said in a statement. “I am confident that the truth will prevail.” The Labor Department says OSHA began investigating the company on June 2, a process that can take six months. The government said in a filing that the inspector “reasonably determined that no imminent danger exists” at the plant.

Suing OSHA is one of a few Hail Marys labor activists are trying to employ. Another one is nuisance laws: Workers in fast food, meatpacking , and retail businesses have used the kinds of laws typically invoked against noisy concerts to sue their employers for mishandling the pandemic in ways that have harmed the public. Amazon employee Barbara Chandler, a plaintiff in one such lawsuit, alleges she contracted Covid at the company's warehouse in Staten Island, N.Y., and brought it home to her cousin, who developed coronavirus symptoms and died in April. When Chandler told an HR rep on March 26 that she'd tested positive, she says, "he just told me, 'Don't say nothing to nobody—just keep it confidential.'" She says Amazon claimed it would alert workers who'd been in contact with her, but didn't ask who those people were and took another four days to send a text message alerting the workforce. Chandler's suit seeks compensation for employees' unpaid Covid-19 sick leave, as well as a court order requiring improved safety measures.

Amazon said in a statement that it tells everyone at its facilities when a co-worker tests positive for the coronavirus and that it's spent more than \$800 million on pandemic-related safety measures through June. In legal filings, the company has said that Chandler's lawsuit is an attempt to "exploit the pandemic" and that the law requires workers to take such claims to OSHA.

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▲ Chandler says Amazon HR told her about her Covid diagnosis: "Don't say nothing to nobody." She's suing for safety upgrades and back pay. PHOTOGRAPHER: SEAN PRESSLEY FOR BLOOMBERG BUSINESSWEEK

The NLRB's and OSHA's authorities limit local governments' discretion to act on workers' behalf, but there are steps they can take. In June, Philadelphia's mayor signed an ordinance that bans firing or otherwise punishing workers who disclose Covid hazards. The new law puts the burden of proof on employers to establish that such firings weren't illegal retaliations and allows the workers to seek penalties in court on behalf of the city.

In July, Colorado's governor signed a similar law, making it illegal for companies to require workers to keep health concerns private or retaliate against workers who raise them. A few days after the Colorado bill signing, Virginia's state safety board passed its own binding Covid regulations, including a ban on retaliation against workers who raise reasonable concerns at work or on social media and a requirement that companies notify co-workers and the state about coronavirus cases.

Other states should adopt such standards and could go further by alerting the public about companies with clusters of cases, says Terri Gerstein, a former labor bureau chief for New York's attorney general's office and now a fellow at Harvard Law School. "It's a matter of public health," she says, "and of opening the economy in a long-term way instead of start-and-stop sputtering."

For now, data-sharing has been among employees' best defenses. While Amazon workers around the country protest the firings of colleagues who'd organized to demand safer practices, including Chandler's former shiftmate Chris Smalls, they're also taking steps to better inform one another of safety risks. Amazon, which has denied retaliating against the organizers, has declined to release statistics about its Covid problem, despite pressure from state attorneys general. So Jana Jumpp, a former worker at an Amazon warehouse in Indiana, has spent the past several months sharing and updating her own Google spreadsheet of confirmed cases across the company's U.S. network.

Jumpp left Amazon in July. Now she's cleaning offices and Airbnbs instead. Still, she's continued to spend her spare time on the phone and Facebook, collecting notifications Amazon has issued to individual warehouses and sharing the tally of sick workers with other Amazon employees and reporters. Besides informing people about the risks of Amazon's facilities, she says, she's trying to remind workers in its warehouses that they aren't invisible and they don't have to be silent. "I want them to know that there's somebody counting," Jumpp says. "There's somebody keeping score for them."

Read next: [Big Pharma Needs a Covid-19 Vaccine to Redeem Its Reeling Reputation](#)

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